

**SECOND AMENDED DECLARATION OF
RESTRICTIONS, COVENANTS AND
HOMES ASSOCIATION'S DECLARATION AT BEAR LAKE**

Declarant, BEAR LAKE HOMES ASSOCIATION, a Kansas not-for-profit corporation, is the successor to Bear Lake, Inc. as the original owner and developer of the Bear Lake planned residential development in Leavenworth County, Kansas. The development is comprised of common areas (as defined in 1.10) and single-family residential lots platted and recorded from time to time in the Office of the Leavenworth County Register of Deeds.

The Declaration of Restrictions, Covenants, and Homes Association's Declaration at Bear Lake, referred to as the Declaration, describes the rights and obligations of each owner and those of the Association. It includes overarching restrictions, maintenance responsibilities, and Association powers of enforcement. If there is anything in another Governing Document that conflicts with a provision in the Declaration, the Declaration takes precedent.

It is desirable to provide uniform restrictions for all single-family residential subdivision lots of the development for the purpose of establishing:

1. A plan for the individual ownership of real property estates consisting of a lot and the improvements contained thereon;
2. A uniform plan for the use of the Property in all single-family residential subdivision lots of the development, and the establishment of regulations to maintain quality neighborhoods;
3. The formation of a nonprofit corporation with membership of the Lot Owners with specific powers of regulation and control affecting single-family residential lots located within the development;
4. The ownership and management of common elements by the nonprofit corporation, BEAR LAKE HOMES ASSOCIATION;

In order to establish the nature of the use and enjoyment thereof, BEAR LAKE HOMES ASSOCIATION, hereby declares said premises subject to the following expressed covenants, stipulations, and restrictions as to the use and enjoyment thereof, all of which are to be construed to be restrictive covenants, running with the title to said premises and with each and every part and parcel thereof to-wit:

**ARTICLE 1
DEFINITIONS**

1.1 **"Assessment"** means a Monthly Assessment, Special Assessment or Lot Specific Assessment.



1.1.1 **"Monthly Assessment"** means the assessments levied against each Lot, and the Owner thereof, pursuant to section 6.2 of this Declaration.

1.1.2 **"Special Assessment"** means any assessment levied and assessed pursuant to section 6.3 of this Declaration

1.1.3 **"Lot-Specific Assessment"** means any assessment levied and assessed pursuant to section 6.4 of this Declaration.

1.2 **"Areas of Association Responsibility"** means (i) all Common Area, including the Improvements and landscaping situated thereon, and (ii) any portion of the Improvements situated on a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association.

1.3 **"Articles"** means the Articles of Incorporation of the Association, as they may from time to time be amended.

1.4 **"Association"** means BEAR LAKE HOMES ASSOCIATION, a Kansas not-for-profit corporation, and its successors and assigns.

1.5 **"Association Lien"** means the lien created and imposed by Section 6.1 of this Declaration.

1.6 **"Association Property"** means any personal property owned or leased by the Association.

1.7 **"Association Rules"** means the Association Rules of the Bear Lake Homes Association, as they may from time to time be amended.

1.8 **"Board"** means the Board of Directors of the Association.

1.9 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

1.10 **"Common Area"** means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. "Common Area" shall include the private roads, trails, Lake, the Wildlife Preserve, Roadway, paths, street islands, subdivision monument signs or markers and all plantings or other improvements and other open spaces in all phases of development of Bear Lake to be held in the name of the Association and dedicated to the common use and enjoyment of all the lot owners and residents of the Properties.

1.11 **"Common Expenses"** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.12 **"Declarant"** means Members of the Association as successor to the developer, Bear Lake, Inc.

1.13 **"Declaration"** means this Amended Second Declaration of Restrictions, Covenants, and Homes Association's Declaration at Bear Lake, as it may be amended from time to time.

1.14 **"Eligible Mortgage Holder, Insurer or Governmental Guarantor"** means a First Mortgagee, insurer or governmental guarantor who has requested notice of certain matters from the Association in accordance with Article 9 of this Declaration.

1.15 **"Exterior Alteration"** means any construction, installation, addition alteration, change of color, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.

1.16 **"First Mortgage"** means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.17 **"First Mortgagee"** means the holder or beneficiary of any First Mortgage.

1.18 **"Front Property Line"** means the property line of any Lot appurtenant to or abutting the Roadway as shown on the Plat.

1.19 **"Governing Documents"** means the Articles, the Bylaws, this Declaration, and the Association Rules.

1.20 **"Home Site Area"** means the area of 43,560 square feet (one acre) surrounding and including the Residential Unit.

1.21 **"Improvement"** means the addition of any Structure, as defined in 1.37 of this Declaration.

1.22 **"Lake"** means the Common Area on the Plat occupied by a lake, dam structure and spillway.

1.23 **"Lessee"** means a third-party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a "third party" is any Person who is not an Owner.

1.24 **"Lot"** means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.24.1 **"Lake Front Lot Owner"** means the Owner of any Lot contiguous with the Lake Shoreline as shown on the Plat. Phase I, Lots 8-12 and Phase II, Lots 5-14.

1.24.2 **"Non-Lake Front Lot Owner"** means the Owner of any Lot not contiguous with the Lake Shoreline as shown on the Plat. Phase I, Lots 1-7, 13-16; Phase II, Lots 1-4, 15-22, 31 and Phase III, Lots 23-30.

1.25 **"Member"** means any Person who is an Owner and member of the Association.

1.26 "**Owner**" means the record owner, whether one or more Persons, of legal, beneficial or equitable title to the fee simple interest of a Lot. "Owner" shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to the Kansas Uniform Trust Code, K.S.A. 58a-101 *et seq.*, the Trustor shall be deemed to be the "Owner."

1.27 "**Outbuilding**" means an enclosed, covered structure which is not directly attached to a Residential Unit.

1.28 "**Person**" means a natural person, corporation, business trust, estate, trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.29 "**Plat**" means the FINAL PLAT OF BEAR LAKE, PHASE I, LOTS 1-16, AND PHASES II AND III, LOTS 1-31, BOTH INCLUSIVE, ORIGINALLY FILED IN BOOK 13, PAGE 24 AND BOOK 13, PAGE 37, LEAVENWORTH COUNTY, KANSAS, REGISTER OF DEEDS, and all amendments, supplements and corrections thereto.

1.30 "**Property**" means the real property described on the Plat.

1.31 "**Purchaser**" means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

1.32 "**Recording**" means placing an instrument of public record in the office of the Leavenworth County Register of Deeds, and "**Recorded**" means having been so placed of public record.

1.33 "**Resident**" means each individual occupying or residing in any Residential Unit.

1.34 "**Residential Unit**" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

1.35 "**Roadway**" means the roads and road easements shown on the Plat, subject to easements for utilities and held by the Association for the use of the Members and Owners, their families and guests, and of public officials while acting in such capacity.

1.36 "**Single Family**" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.37 "**Structures**" means an addition or improvement to a Lot which is Visible from a Neighboring Property, including but not limited to outbuildings, fences, retaining walls, hardscapes, driveways, swimming pools, tanks, greenhouses, antennas (except those commonly used for television or internet reception), solar panels, wind turbines, gazebos, docks and the like.

1.38 **"Trails"** shall mean paths across Phase II Lake Front Lots within twenty-five feet above the shoreline, officially recorded lake access easements, the Wildlife Preserve or other Common Property established for the purposes of hiking and shall be easements for unpaved access ways and for use of Members or Association.

1.39 **"Visible from Neighboring Property"** means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property or from a Common Area.

1.40 **"Wildlife Preserve"** means the Common Area on the Plat subject to the easement held by the Kansas Department of Wildlife, Parks and Tourism.

ARTICLE 2 PLAN OF DEVELOPMENT

2.1 **Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Property and in order to protect and enhance the value and desirability of the Property. All of the Property shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

ARTICLE 3 USE RESTRICTIONS

3.1 **Architectural Control.** The Board shall enforce architectural guidelines to adopt, establish, and enforce construction and design criteria and aesthetic standards. The Board shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the Board must act after an application is submitted and the consequences of its failure to act.

In addition to any requirements imposed by Leavenworth County:

3.1.1 All Improvements shall be of new construction, and no building or other structures shall be moved from other locations onto any Lot.

3.1.2 No excavation work shall be performed on any Lot without the prior written approval of the Board.

3.1.3 No Improvements shall be constructed or installed on any Lot without the prior written approval of the Board.

3.1.4 No Exterior Alteration shall be made or done without the prior written approval of the Board if that alteration would be readily noticeable from the Roadway, Common Area, or any neighboring property and could potentially have an impact on Bear Lake property values and/or any Resident's enjoyment of living in Bear Lake. An example of an Exterior Alteration that would NOT require prior approval would be updating/replacing a light fixture on your front porch, and an example of an Exterior Alteration that WOULD require prior approval would be changing the color of your front door.

3.1.5 The Association Rules provide greater specificity regarding plan submission requirements for Board approval for Residential Units, Outbuildings, and other Structures.

3.2 Repair of Building. No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event that any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be repaired or rebuilt within 6 months or shall be demolished. If additional time is required, the homeowner will submit a request to the Board for a variance.

3.3 Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the Board, interior remodeling, re-roofing or other work shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month without the prior written approval of the Board.

3.4 Rubbish. No rubbish or debris of any kind shall be allowed to accumulate or remain upon any Lot or Common Area.

3.5 Nuisance. No noxious or offensive activity shall be carried on upon the Property, so as to be offensive or detrimental to the neighborhood.

3.6 Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.7 Utility Service. No lines, wires, or other devices for the transmission of electric current, telephone, television, internet or radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board.

3.8 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family, with no more than one Residential Unit per lot. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof for periods of not less than thirty (30) consecutive days shall not be considered a trade or business within the meaning of this Section.

3.9 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner.

3.10 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Property, or any part thereof, or for any Lot as shown on the drainage plans on file with the county in which the Property is located.

3.11 Residential Unit Size. No Residential Unit shall be approved and constructed unless it has between 2000 and 4500 square feet of above ground (raised sub-floor) living area and an attached garage, or between 2500 and 4500 square feet of above ground (raised sub-floor) living area and no attached garage. Square footage associated with attached garages and finished basements are not included. Plans submitted to the Board for approval that satisfy these parameters do not require a variance request. Plans submitted to the Board for approval that do not satisfy these parameters must be accompanied by a variance request describing any special features or circumstances that justify the size variance. Note that the Board will consider other factors in addition to minimum/maximum square footage when deciding whether or not to approve proposed Residential Unit plans.

3.12 Common Area. Subject to the provisions of this Declaration, every Member shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot. Improvements upon the Common Area shall be used only for their intended purpose. No Owner shall erect, alter or remove any improvements on the Common Area or use them for personal purposes except as authorized by the Board. Any Owner damaging or abusing a Common Area shall be liable to the Association for the cost of restoration, replacement and repair. Guests of the Owners may also use and enjoy the Common Areas for their intended purposes, subject to the restrictions identified in the Rules. However, the Owner shall be responsible to the Association for any damage to or abuse of the Common Areas by any such guests. Lot Owners who are not Members in good standing are prohibited from using all Common Areas other than using the Roadways for ingress and egress.

3.12.1 Roadways. That portion of the Property designated on the Plat as Roadways shall consist of an easement area which will serve as the central interior traffic drive and collector for the Property. The Roadways shall be used only for such purpose as a free and clear roadway for ingress and egress purposes. No Lot Owner shall obstruct, damage or abuse the same. The Association, at its sole cost and expense and not at the cost of Leavenworth County, or any other municipality, will maintain all bridges, lights, street islands, subdivision monument signs or markers, and all plantings or other improvements located within or along the Roadways. The Association shall maintain in good condition and repair the paved portion of the Roadways and supportive shoulders. Owners are responsible for maintenance of their Lot up to the paved portion of the adjoining Roadway, including mowing at least six (6) feet of their Lot parallel to and along the Roadway to normal lawn height.

3.12.2 Lake Docks. No Owner shall erect or maintain a dock or other boat housing facility on the Lake or shore of the Lake, except for Lake Front Lot Owners who may erect a single dock of a type (as specified in the Association Rules) and in a location as approved in writing by the Board.

3.12.3 Wildlife Preserve. The Wildlife Preserve shall remain free and clear of any improvements thereon other than Trails and docks placed and maintained by the Association. Any Owner clearing any portion of the Wildlife Preserve or cutting trees or brush, building hunting structures, stands or blinds, or otherwise damaging or abusing the natural state of the Wildlife Preserve shall be liable to the Association for the cost of restoration, replacement and repair. The terms and conditions of the Conservation Easement shall be complied with at all times by the Association and all Owners, other residents and guests.

3.13 The Association Rules. In addition to the Use Restrictions stated in this Declaration, there is an Association Rules document which is intended to provide significantly more specificity on day-to-day restrictions and responsibilities. Adoption/amendment of the Association Rules is subject to approval by the Association Membership based on a simple majority of votes in which the total number of votes cast represents a quorum as specified in Section 5.6 of the Bylaws.

3.14 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 3, the Declaration if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees or the Property and is consistent with the high quality of life intended for residents of the Property.

ARTICLE 4 EASEMENTS AND SETBACK LINES

4.1 Owners' Easements of Enjoyment.

4.1.1 Every Owner or Lessee, and any person residing with such Owner or Lessee, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners or Lessees.

(ii) The right of the Board to suspend the right of an Owner or Lessee and such Owner's or Lessee's family, tenants and guests to use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Lessee has violated any other provisions of the Governing Documents and has failed to cure such violation within fifteen (15) days after the Board notifies the Owner of the violation. The Board may not deny an Owner or other occupant access to the Lot or withhold services provided to a Lot or Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any Person.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right, without the specific written consent of the Board, to use the Common Area until the termination or expiration of such lease.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this Easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, waterlines, or other utility or service lines may be installed

or located on the Common Area or Lots except as initially designed, approved and constructed or as approved by the Board.

4.3 Setback Lines. Residential Units and Outbuildings (including garages, porches, stairs) or other Lot improvements shall be erected only within the Home Site Area. They shall not be erected on any Lot (a) closer to the perimeter than any building line shown on the Plat, (b) within one-hundred five feet (105) feet of the Front Property Line as shown on the Plat, (c) within thirty (30) feet of any side property line, and (d) within seventy (70) feet of the Lake Shoreline as it exists at the time of construction. Only the access driveway contiguous to the Roadway, private docks for Lake Front Lots, and entrance markers/gates are allowed to be constructed outside of the Home Site. Notwithstanding anything contained herein to the contrary, no setback lines established herein shall conflict with the Leavenworth County zoning and subdivision regulations.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a Kansas not-for-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Governing Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, or Association Rules, this Declaration shall control.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

5.3 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.4 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Governing Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Governing Documents or reasonably necessary to effectuate any such right or privilege.

5.5 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

5.6 Voting Procedures. Voting procedures shall be as stated in the Bylaws of the Association.

5.7 Transfer of Membership. The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Kansas. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

ARTICLE 6 COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFOR

6.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in enforcing the Governing Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due.

6.2 Monthly Assessments. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Governing Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess a Monthly Assessment against each Lot. Fifty percent (50%) of the collected Monthly Assessments shall be reserved for capital expenses associated with maintenance of the Common Areas.

6.2.1 The ratio of the Monthly Assessment paid by Lake Front Lot Owners and Non-Lake Front Lot Owners shall always be 80:50 whether the Monthly Assessment is raised or lowered

6.2.2 Any change in Monthly Assessment shall be set by a vote of the Members. Any Monthly Assessment shall have the assent of two-thirds (2/3) of the votes cast. For purposes of a Monthly Assessment vote, a quorum shall be 75% of the eligible votes.

6.2.3 The Board shall give notice of any change of the Monthly Assessment at least thirty (30) days prior to the effective date of the change.

6.2.4 **Assessment Due Date.** Monthly Assessments are considered delinquent if not paid by the end of month.

6.3 **Special Assessments.** The Association may levy against each Lot, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any element within the Areas of Association Responsibility, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes cast. For purposes of a Special Assessment vote, a quorum shall be 75% of the eligible votes. Special Assessments may be collected as specified by the Board.

6.4 **Lot Specific Assessments.** Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

6.5 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Area of Association Responsibility, or that the Association is not enforcing the Governing Documents.

6.6 **Fines and Penalties.** In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Governing Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Governing Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be determined by the Board.

6.7 Notice of Violation, Appeal and Payment of Fines and Penalties.

6.7.1 The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Governing Documents by the Owner, his family or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) if applicable, the amount of the fine to be paid by the Owner or Lessee for

such violation, (iv) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

6.7.2 A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by United States mail or other trackable delivery service. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Residential Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

6.7.3 The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

6.7.4 Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.8 Costs of Enforcement. Any costs incurred by the Association in enforcing this Declaration or the other Governing Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1.

6.9 Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.

6.9.1 Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within forty-five (45) days after the Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee and interest to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof, within forty-five (45) days after such payment was due.

6.9.2 As set forth in Section 6.1, the Association shall have a lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth

the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

6.9.3 Subject to applicable statutes, the Lien created by Section 6.1 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

6.9.4 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

6.9.5 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities that are part of the Common Area.

6.9.6 The Board may, without notice or demand, enforce the lien established pursuant to Section 6.1.

6.9.7 The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

6.10 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Monthly Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE 7 MAINTENANCE

7.1 Areas of Association Responsibility.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the (i) Common Area, and all Improvements located thereon, and (ii) all Association Property.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.1.3 The Association is authorized to modify Common Areas in its discretion, except for the Wildlife Preserve. Modification of Common Property is subject to approval by not less than two-thirds of the votes of those Members in good standing who are voting in person or by proxy at a meeting duly called for this purpose with written notice to all Lot Owners at least thirty days in advance, said notice setting forth the purpose of the meeting. In order to be considered a valid vote, a quorum of seventy-five percent (75%) of Members in good standing shall vote in person or by proxy.

7.2 Lots. Each Owner shall be responsible for maintaining his or her Lot. Each Owner shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, landscaping or other Improvements situated on his or her Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed. No yard equipment, wood piles or storage area may be maintained so as to be deemed offensive when Visible from Neighboring Property. Additionally, the Association Rules document provides significantly more specificity on Lot maintenance requirements and restrictions.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Board with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

7.4 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Governing Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

7.5. Maintenance of Roadway. The Association shall be responsible for maintenance, operation, replacement, repair and paving of the Roadway

7.6 Maintenance of Lake. The Association shall be responsible for maintaining the Lake, its health, including the dam, aquatic life, aquatic vegetation, erosion, sediment and lake restoration.

7.7 Maintenance of Wildlife Preserve. The Wildlife Preserve, access trails and facilities located with the Wildlife Preserve shall be maintained and operated by the Association.

ARTICLE 8 INSURANCE

8.1 Scope of Coverage. The Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$2,000,000.

8.1.2 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Kansas;

8.1.3 Directors and officer's liability insurance in an amount to be determined by the Board;

8.1.4 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

8.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be paid by the Association.

ARTICLE 9 GENERAL PROVISIONS

9.1 Enforcement. Any Owner shall have the right to request the Association enforce Governing Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association to take enforcement

action with respect to a violation of the Governing Documents shall not constitute or be deemed a waiver of the right of the Association to enforce the Governing Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the non-prevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

9.2 Method of Termination. This Declaration shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the Office of the Leavenworth County Register of Deeds, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved.

9.3 Amendments. This Declaration may be altered, amended, or a new Declaration adopted by an affirmative vote of two-thirds (2/3) of the votes cast. For purposes of an Amendment vote, a quorum shall be 75% of the Members who are entitled to vote. No such amendment shall be effective unless written notice of the proposed amendment is provided to every Lot owner at least sixty (60) days in advance of any action taken.

9.4 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, or Association Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules, the Bylaws shall control.

9.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

9.6 Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or by the Lot owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless terminated per Article 9.2 or amended per Article 9.3 of this Declaration.

9.6.1 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of

perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.7 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

9.8 Laws, Ordinances and Regulations.

9.8.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

9.8.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

9.9 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Property may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, successors and assignees.

9.10 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.11 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

9.12 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Leavenworth County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

9.13 Condemnations of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed to each Lot or retain such funds as additional operating or capital reserves.

IN WITNESS WHEREOF, the Declarant Association has executed this Declaration as of the 15 day of December, 2021.

BEAR LAKE HOMES ASSOCIATION
A Kansas Not-for-Profit Corporation:

By: Laura Wyckoff Its: President
Laura Wyckoff

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

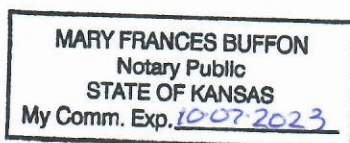
STATE OF KANSAS

COUNTY OF JOHNSON

This document was acknowledged before me on this 15 day of DECEMBER, 2021

by Laura Wyckoff
(Name of Principal)

[Notary Seal, if any]



Mary Frances Buffon
(Signature of Notary)

Notary Public for the State of Kansas

MARY FRANCES BUFFON

My commission expires: October 7, 2023